

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ADJUSTACAM LLC

v.

AMAZON.COM, INC.; ET AL.

NO. 6:10-cv-329-LED

JURY

**NOTICE OF SUPPLEMENTAL AUTHORITY FOR PLAINTIFF'S MOTION TO
DISMISS ITS CLAIMS AGAINST SAKAR AND KOHL'S AND THEIR
COUNTERCLAIMS AGAINST PLAINTIFF FOR LACK OF SUBJECT MATTER
JURISDICTION**

Plaintiff AdjustaCam, LLC ("AdjustaCam") respectfully submits this notice of supplemental authority in support of its opposed Motion to Dismiss (Doc. No. 721), as follows:

As noted in Plaintiff's Motion, the cancellation of the Asserted Claims in reexamination proceedings moots or near moots the issues remaining in this case – *e.g.*, infringement of the Asserted Claims, validity of the Asserted Claims and damages due for infringement of the Asserted Claims. In fact, at this point, all Defendants except Sakar/Kohl's have been dismissed either by settlement or mutual agreement. *See, e.g.*, Orders of Dismissal at Doc Nos. 665, 671, 672, 673, 674, 675, 677 and 720. Further, in order to overcome Sakar/Kohl's opposition to being dismissed with prejudice relative to the now-canceled Asserted Claims that are no longer in dispute, AdjustaCam has taken the further step of granting Sakar/Kohl's a covenant not to sue under the '343 patent. *See* Doc. No. 721, Exhibit 2.

As noted in Plaintiff's Motion to Dismiss, irrespective of the canceled claims and irrespective of Sakar/Kohl's opposition to being dismissed with prejudice, AdjustaCam's covenant not to sue under the '343 patent divests the Court of subject matter jurisdiction with respect to Sakar/Kohl's counterclaims for invalidity and non-infringement. *See, e.g., Super Sack Mfg. Corp. v. Chase Packaging Corp.*, 57 F.3d 1054, 1058 (Fed. Cir. 1995).

As further support for its Motion to Dismiss, Plaintiff respectfully submits Exhibit A hereto, which is the Jury Verdict form that was submitted yesterday as part of the parties' Joint Pretrial submission. (Doc No. 723, Exhibit 6). As can be seen, Plaintiff has not requested any jury questions since the parties' prior dispute over the Asserted Claims is now moot. More importantly, Defendants' purported jury questions relate solely to their baseless allegation that that this is an exceptional case, which is an issue to be decided by the Court, not by the jury. *See, e.g., Eon-Net LP v. Flagstar Bancorp*, 653 F.3d 1314, 1323 (Fed. Cir. 2011).

Although Defendants are free to reserve or pursue their baseless exceptional case allegations with the Court, there are no triable issues left for jury, and the case should be dismissed without further burdening the parties and the Court with pretrial motions and submissions.

October 3, 2012

Respectfully submitted,

By: /s/ John J. Edmonds
John J. Edmonds – LEAD COUNSEL
Texas State Bar No. 789758
Michael J. Collins
Texas Bar No. 4614510
Stephen F. Schlather
Texas Bar No. 24007993
COLLINS, EDMONDS, POGORZELSKI,
SCHLATHER & TOWER, PLLC
1616 S. Voss Rd., Suite 125
Houston, Texas 77057
Telephone: (713) 501-3425
Facsimile: (832) 415-2535
jedmonds@cepiplaw.com
mcollins@cepiplaw.com
sschlather@cepiplaw.com

Andrew W. Spangler
Texas Bar No. 24041960
Spangler & Fussell P.C.

208 N. Green Street, Suite 300
Longview, Texas 75601
(903) 753-9300
(903) 553-0403 (fax)
spangler@spanglerlawpc.com

ATTORNEYS FOR PLAINTIFF
ADJUSTACAM LLC

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

October 3, 2012

/s/ John J. Edmonds
John J. Edmonds